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which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by the FHFA; or

(2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the regulated entity's most recent report of examination or other information available to the FHFA.

(1)-(n) [Reserved]

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§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment, the Director shall consider the following factors—

(a) Whether there is a reasonable basis to believe that the entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

(b) Whether there is a reasonable basis to believe that the entity-affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(c) Whether there is a reasonable basis to believe that the entity-affiliated party has materially violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(d) Whether the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(e) The length of time that the party was affiliated with the regulated entity, and the degree to which the payment reasonably reflects compensation earned over the period of employment and the compensation involved represents a reasonable payment for services rendered; and

(f) Any other factor the Director determines relevant to the facts and cir-

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cumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

[73 FR 53357, Sept. 16, 2008, as amended at 73 FR 54673, Sept. 23, 2008; 74 FR 5102, Jan. 29, 2009]

PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec.

1233.1 Purpose.

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AUTHORITY: 12 U.S.C. 4511, 4513, 4514, 4526, 4642.

SOURCE: 75 FR 4258, Jan. 27, 2010, unless otherwise noted.

§ 1233.1 Purpose.

The purpose of this part is to implement the Safety and Soundness Act by requiring each regulated entity to report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, each regulated entity must establish and maintain internal controls, policies, procedures, and operational training to discover such transactions.

§ 1233.2 Definitions.

The following definitions apply to the terms used in this part:

Bank or *Federal Home Loan Bank* means a Bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

Director means the Director of FHFA or his or her designee.

Enterprise means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation

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(collectively, Enterprises), and any affiliate thereof.

Entity-affiliated party means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant);

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

Financial instrument means any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value including, but not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member.

Fraud means a misstatement, misrepresentation, or omission that cannot be corrected and that was relied upon by a regulated entity to purchase or sell a loan or financial instrument.

Possible fraud means that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

Purchased or sold or relating to the purchase or sale means any transaction involving a financial instrument including, but not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance,

the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

§ 1233.3 Reporting.

(a) *Timeframe for reporting.* (1) A regulated entity shall submit to the Director a timely written report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b) *Format for reporting.* (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe.

(2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud that the Director deems appropriate.

(3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency,

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provided it has first obtained the prior written approval of the Director.

(c) *Retention of records.* A regulated entity or entity-affiliated party shall maintain a copy of any report submitted to the Director and the original or business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity or entity-affiliated party may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

§ 1233.4 Internal controls, policies, procedures, and training.

(a) *In general.* Each regulated entity shall establish and maintain adequate and efficient internal controls, policies, procedures, and an operational training program to discover and report fraud or possible fraud in connection with the purchase or sale of any loan or financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity includes an evaluation of the effectiveness of the internal controls, policies, procedures, and operational training program in place to minimize risks from fraud and to report fraud or possible fraud to FHFA in accordance with this regulation.

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§ 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report to the person who is the subject of such report, or any other persons identified in the report.

§ 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

PART 1235—RECORD RETENTION FOR REGULATED ENTITIES AND OFFICE OF FINANCE

Sec.

1235.1 Purpose and scope.

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1235.3 Establishment and evaluation of a record retention program.

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1235.7 Supervisory action.

AUTHORITY: 12 U.S.C. 4511(b), 4513(a), 4513b(a)(10) and (11), 4526.

SOURCE: 76 FR 33127, June 8, 2011, unless otherwise noted.

§ 1235.1 Purpose and scope.

The purpose of this part is to set forth minimum requirements for a record retention program for each regulated entity and the Office of Finance. The requirements are intended to further prudent management as well as to ensure that complete and accurate records of each regulated entity and